UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MISSOURI EASTERN DIVISION

ANTHONY WASHINGTON,)
Petitioner,)
vs.) Case No. 4:09 CV 859 DJS(LMB)
MICHAEL BOWERSOX))
Respondent.)

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

This matter is before the court on the petition of Anthony Washington for a writ of habeas corpus under 28 U.S.C. § 2254. This cause was referred to the undersigned United States Magistrate Judge for a Report and Recommendation pursuant to 28 U.S.C. § 636 (b).

On November 8, 2010, petitioner filed a Motion to Voluntarily Dismiss Petition for Writ of Habeas Corpus. (Document Number 11). In this motion, petitioner requests that the court dismiss his petition without prejudice so that he can exhaust his remedies in state court.

The relevant federal statute provides that an "application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State." 28 U.S.C. § 2254(b)(1)(A).

Petitioner indicates that, since filing his petition, he has discovered several issues that must be presented to the Missouri courts. While it is unclear whether any state court forum is available to petitioner at this stage, petitioner should be given the opportunity to present his claims in state

court.

Accordingly,

IT IS HEREBY RECOMMENDED that petitioner's Motion to Voluntarily Dismiss

Petition for Writ of Habeas Corpus (Doc. No. 11) be granted.

The parties are advised they have fourteen (14) days in which to file written objections to this

Report and Recommendation pursuant to 28 U.S.C. § 636 (b) (1), unless an extension of time for

good cause is obtained, and that failure to file timely objections may result in a waiver of the right

to appeal questions of fact.

Dated this <u>10th</u> day of November, 2010.

LEWIS M. BLANTON

UNITED STATES MAGISTRATE JUDGE

Lewis M. Bankon